STATE OF MICHIGAN

IN THE SUPREME COURT

In the Matter of:

ESTATE OF CLIFFMAN

ELMER CARTER, PHILIP CARTER, DAVID CARTER, and DOUG CARTER,

Appellants,

v.

BETTY WOODWYK and VIRGINIA WILSON,

Appellants.

MSC No. 151998

COA No. 321174
(Hoekstra, P.J., and O'Connell and Murray, JJ.)

Allegan County Probate Court
LC No. 13-38358-DE

Hon. Michael Buck

CORRECTED

BRIEF OF *AMICUS CURIAE* STATE BAR OF MICHIGAN'S PROBATE AND ESTATE PLANNING SECTION IN SUPPORT OF APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

PRINCE
LAW FIRM

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SBM | PROBATE & ESTATE PLANNING SECTION

PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

*

Amicus Brief for In re Cliffman Estate, COA Case #321174

*

The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 3,762.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 12. The number who voted opposed to this position was 0.

SBM | PROBATE & ESTATE PLANNING SECTION

Report on Public Policy Position

Name of section:
Probate & Estate Planning Section

Contact person:
Marlaine C. Teahan

E-Mail:
mteahan@fraserlawfirm.com

Regarding:
In re Cliffman Estate, COA Case #321174

Date position was adopted:
June 7, 2014

Process used to take the ideological position:
Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:
23

Number who voted in favor and opposed to the position:
12 Voted for position
0 Voted against position
0 Abstained from vote
11 Did not vote (absent)

Position:
See attached letter

It is the Council's opinion that the holding in In re Combs, 257 Mich App 622; 669 NW2d 313 (2003); cert den 469 Mich 1021; 678 NW2d 440(2004), was too restrictive a reading of the Wrongful Death Act, MCL 600.2922, relative to the treatment of step-children. The Council supports a complete appellate review of the issue and the overruling of the ruling in the Combs case.

SBM STATE BAR OF MICHIGAN

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PROBATE AND ESTATE PLANNING SECTION

March 6, 2015

Michigan Court of Appeals
P.O. Box 30022
Lansing, MI 48909-7522

Re: **Elmer Carter, Philip Carter, David Carter and Doug Carter vs. Betty Woodwyk and Virginia Wilson, Court of Appeals No. 321174**

Letter in Support of Appellants' Requested Relief

Dear Sir/Madam:

This letter is being sent on behalf of the Probate and Estate Planning Section of the Michigan State Bar (the "Section"). The Section supports the Appellants' requested relief in the above-captioned case. Specifically, the Section believes a special panel of the Court of Appeals should be convened to reconsider the interpretation of Michigan's wrongful death statute set forth in ***In re Combs***, 257 Mich App 622 (2003).

The wrongful death statute, MCL § 600.2922, governs the person or persons entitled to file a claim for a portion of the proceeds resulting from a wrongful death action. The pertinent part of the statute provides:

> (3) Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to 700.2805 the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:
>
> . . .
>
> (b) The children of the deceased's spouse.

MCL § 600.2922(3)(b). Thus, according to MCL § 600.2922(3)(b), "[t]he children of the deceased's spouse" are permitted to file such a claim. Although the wrongful death statute never defines "children of the deceased's spouse," in common parlance this phrase is equivalent to "step-children."

In ***In re Combs*** the court held that since Arlie Combs passed away six years before the decedent -- his wife Ellen Combs -- Arlie was not Ellen's "spouse" at the time of Ellen's death. Consequently, at the time of Ellen's death, Arlie was not "the deceased's spouse" within the meaning of MCL § 600.2922(3)(b). Therefore, Arlie's children – Ellen's stepchildren – were not entitled to file a claim in Ellen's wrongful death action. The ***In re Combs*** decision thus created two classes of step-children: those whose biological parent survived the step-parent, and those whose biological parent predeceased the step-parent. The former would be entitled to file a claim under MCL § 600.2922 and the latter would be barred.

The ***In re Combs'*** court's interpretation of MCL § 600.2922 directly contradicts the definition of "stepchild" in the Estates and Protected Individuals Code ("EPIC") – Michigan's probate code. Under EPIC, "stepchild" is defined as follows:

> "Stepchild" means a child of the surviving, **deceased**, or former spouse of the testator or of the donor of a power of appointment, who is not the testator's or donor's child.

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PROBATE AND ESTATE PLANNING SECTION

MCL § 700.2601(e) (emphasis added). In addition:

> "Stepchild" means a child of the decedent's surviving, **deceased**, or former spouse and not of the decedent.

MCL § 700.2708(e) (emphasis added). The plain language of these statutory sections is quite clear: under Michigan probate law – as codified by EPIC – all step-children are treated equally. A stepchild does not cease to be a stepchild of a decedent simply because the stepchild's biological parent dies before the decedent. Rather, a stepchild remains a stepchild regardless of whether his or her biological parent survives the decedent.

Although the phrase "[t]he children of the deceased's spouse" in MCL § 600.2922(3)(b) is clearly a reference to step-children, it is nevertheless ambiguous. Because the phrase is not defined, it is open to two interpretations: that set forth by the ***In re Combs'*** court on the one hand, and that set forth by the Michigan Legislature in EPIC on the other. The Appellants' Brief extensively discusses this ambiguity and presents persuasive evidence that, when passing the wrongful death statute, the Michigan Legislature intended that all step-children be treated equally and be entitled to file a claim – regardless of whether their biological parent was still living.

In today's society, second marriages have become commonplace and "blended" families seem to be the rule rather than the exception. The outcome of this case thus has far-reaching effects for a great deal of Michigan families. For this reason and the reasons set forth in the paragraphs above, the Section supports the Appellant's requested relief. The Section requests that the Court of Appeals make a specific finding under MCR 7.215(J)(2) that, but for the ***In re Combs*** holding, the Court would have held that MCL § 600.2922 is ambiguous and that the Michigan Legislature intended "the children of a deceased's spouse" to include all step-children. The Section believes that this particular question is outcome determinative and warrants convening a special panel under MCR 7.215(J)(3) to consider whether the ***In re Combs*** decision should be reversed.

Thank you for your consideration.

Respectfully,

Amy N. Morrissey
Chair

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JURISDICTIONAL STATEMENT

The State Bar of Michigan's Probate and Estate Planning Section (the "Probate and Estate Planning Section") relies on the jurisdictional statement provided by Appellants Elmer Carter, Philip Carter, David Carter, and Doug Carter, as well as MCR 7.301(A)(2), MCR 7.302(B)(3), and MCR 7.302(B)(5). The Probate and Estate Planning Section further states that its *amicus curiae* brief is being filed pursuant to this Honorable Court's September 9, 2015, order granting leave to file. (Exhibit 1). The Probate and Estate Planning Section strongly believes that the issues raised in the application warrant this Honorable Court's attention and that the Court of Appeals' decision in *In re Combs Estate*, 257 Mich App 622; 669 NW2d 313 (2003), should be overruled. (Exhibit 2).

JUDGMENT BEING APPEALED AND RELIEF SOUGHT

The instant application for leave to appeal arises out of Appellees Betty Woodwyk's and Virginia Wilson's (collectively, "Appellees") petition to preclude Appellants Elmer Carter, Philip Carter, David Carter and Doug Carter (collectively, "Appellants") from filing claims for a portion of the settlement proceeds that arose out of an automobile-related, wrongful death action brought under MCL 600.2922 (the "Wrongful Death Act"). On March 21, 2014, the Allegan County Probate Court granted Appellee's petition for declaratory relief and entered an order denying Appellants the right to file claims. In reaching its decision to deny the Appellants the right to file claims for a portion of the settlement proceeds, the probate court interpreted and relied on *In re Combs Estate*, 257 Mich App 622; 699 NW2d 313 (2003). On June 9, 2015, the Court of Appeals affirmed the probate court's interpretation and application of the majority's opinion in *In re Combs* holding that standing to seek a share of a wrongful death recovery or settlement may only be granted to a stepchild of the deceased if that stepchild's natural parent survived the deceased and was married to the deceased at the deceased's death.

The State Bar of Michigan's Probate and Estate Planning Section believes that the holding by the majority in *In re Combs* should be reversed because it is contrary to the purpose of the Wrongful Death Act (as amended in 1985) and the intent of the Legislature. Therefore, the Probate and Estate Planning Section respectfully requests that this Honorable Court overrule the holding of *In re Combs* and remand the matter to the probate court for reconsideration consistent with the Probate and Estate Planning Section's *amicus curiae* brief.

STATEMENT OF GROUNDS FOR APPEAL

The questions presented by this case are of particular significance to *amicus curiae* Probate and Estate Planning Section and its members, all of whom have an obvious interest in: (a) the standard that courts should and will apply when interpreting and applying MCL 600.2922(3)(b) as it relates to stepchildren of the deceased; and (b) the interplay between the Wrongful Death Act, post-death estates, and the Estates and Protected Individuals Code. The Probate and Estate Planning Section believes that the majority in *In re Combs* substantially erred in its interpretation of MCL 600.2922(3)(b) and, more importantly, that the statute should be read and applied to make each stepchild of a deceased, regardless of whether the stepchild's natural parent predeceased the deceased, eligible to seek a portion of wrongful death proceeds consistent with the evidentiary standards necessary to prove a loss of society and companionship.

AMICUS CURIAE'S STATEMENT OF QUESTIONS PRESENTED

I. WHETHER THE DECISION IN *IN RE COMBS* SHOULD BE OVERRULED BECAUSE THE COURT OF APPEALS INCORRECTLY INTERPRETED MCL 600.2922(3) OF THE WRONGFUL DEATH ACT TO ALLOW ONLY THE STEPCHILDREN OF A SPOUSE WHO SURVIVED THE DECEASED TO SEEK A SHARE OF THE PROCEEDS FROM A WRONGFUL DEATH SETTLEMENT OR RECOVERY?

Appellants Answer: Yes.

Probate Court Answers: No.

Court of Appeals Answers: No.

Appellees Answer: No.

Amicus Curiae Answers: Yes.

II. WHETHER A DECEDENT'S STEPCHILDREN WHOSE NATURAL PARENT DIED WHILE STILL MARRIED TO THE DECEDENT SHOULD BE ENTITLED TO NOTICE OF A WRONGFUL DEATH CLAIM AND BE PERMITTED TO SEEK A SHARE OF ANY PROCEEDS RECOVERED UNDER THE WRONGFUL DEATH ACT CONSISTENT WITH THE COMMON LAW MEASUREMENT FOR A LOSS OF SOCIETY AND COMPANIONSHIP?

Appellants Answer: Yes.

Probate Court Answers: No.

Court of Appeals Answers: No.

Appellees Answer: No.

Amicus Curiae Answers: Yes.

III. WHETHER A DECEDENT'S STEPCHILDREN WHOSE NATURAL PARENT DIED WHILE NO LONGER MARRIED TO THE DECEDENT SHOULD BE ENTITLED TO NOTICE OF A WRONGFUL DEATH CLAIM AND BE PERMITTED TO SEEK A SHARE OF ANY PROCEEDS RECOVERED UNDER THE WRONGFUL DEATH ACT CONSISTENT WITH THE COMMON LAW MEASUREMENT FOR A LOSS OF SOCIETY AND COMPANIONSHIP?

Appellants Answer: Did not answer.

Probate Court Answers: No.

Court of Appeals Answers: No.

Appellees Answer: No.

Amicus Curiae Answers: Yes.

STATEMENT OF FACTS

INTRODUCTION

The instant application for leave to appeal revolves around the scope and application of a single section of the Michigan's Wrongful Death Act contained in MCL 600.2922 (the "Wrongful Death Act"). Specifically, the question presented to this Honorable Court is whether MCL 600.2922(3)(b) is properly read to grant a stepchild of a deceased standing to seek a share of a wrongful death recovery or settlement only if that stepchild's natural parent survived the deceased and was married to the deceased at the deceased's death. The probate court and the reviewing panel of the Court of Appeals each concluded in the affirmative and relied on the majority holding in *In re Combs Estate*, 257 Mich App 622; 669 NW2d 313 (2003). (Exhibit 3; Exhibit 4).

Appellants Elmer Carter, Philip Carter, David Carter, and Doug Carter ("Appellants") filed their application for leave to appeal on the grounds that *In re Combs* was decided wrongly and should be overruled by this Honorable Court. The State Bar of Michigan's Probate and Estate Planning Section (the "Probate and Estate Planning Section") agrees with Appellants that *In re Combs* should be overruled. The Probate and Estate Planning Section believes that the majority in *In re Combs*, and by extension the probate court and the reviewing panel of the Court of Appeals, erred significantly in the interpretation and application of MCL 600.2922(3)(b). More specifically, and as discussed more fully *infra*, the Probate and Estate Planning Section respectfully submits that MCL 600.2922(3)(b) should be interpreted to provide that each stepchild of a deceased, regardless of whether the stepchild's natural parent predeceased the deceased or was divorced from the deceased, should be eligible to seek a share of

wrongful death proceeds consistent with the evidentiary requirements to establish a loss of society and companionship. As a result, the Probate and Estate Planning Section believes that *In re Combs* should be overruled and the matter should be remanded to the probate court for reconsideration consistent with the interpretation of MCL 600.2922(3)(b) urged in the Probate and Estate Planning Section's *amicus curiae* brief.

RELEVANT FACTS PRESENTED TO THE PROBATE COURT AND THE COURT OF APPEALS

The facts relevant to this case appear straightforward and undisputed. (*See* Appellants' Application for Leave to Appeal, at 10) Gordon Cliffman ("Gordon") never had any biological children. *Id.* Gordon married Betty Carter ("Betty") in 1976. *Id.* At the time, Betty was divorced and had six minor children from a previous marriage. *Id.* Gordon never adopted any of Betty's children, but he apparently raised them as his own. *Id.*

Gordon and Betty remained married until Betty's death in 1996. *Id.* Gordon never remarried. *Id.* At Gordon's death on October 2, 2012, four of Betty's six children remained living. *Id.* Gordon also was survived by four sisters. *Id.* Gordon died intestate. *Id.*

Gordon died from injuries sustained in an automobile accident. *Id.* A settlement in the amount of $300,000.00 was approved by the probate court on December 18, 2013. *Id.* at 10-11. The matter presented to this Honorable Court is whether Betty's surviving children, who are Gordon's stepchildren, may apply for a share of the wrongful death settlement under MCL 600.2922 despite the fact that Betty predeceased Gordon.

ARGUMENT

The Probate and Estate Planning Section is the single, largest, voluntary section of the State Bar of Michigan and it provides education, information, and analysis about issues of concern through meetings, seminars, its website, public service programs, and a newsletter. Part of the Probate and Estate Planning Section's mission is to monitor, analyze, and advocate for legislation and common law developments that impact the practice areas of its membership. Membership in the Probate and Estate Planning Section is open to all members of the State Bar of Michigan.

The Probate and Estate Planning Section is not concerned whether Appellants should ultimately receive any portion of the wrongful death settlement at issue in the probate court proceedings. However, the instant application for leave to appeal is of particular concern to the Probate and Estate Planning Section because it believes that the Court of Appeals decision in *In re Combs Estate*, 257 Mich App 622; 669 NW2d 313 (2003), erroneously interpreted the Wrongful Death Act contained in MCL 600.2922 as permitting a stepchild the opportunity to share in wrongful death proceeds only if the stepchild's natural parent survived the decedent. By extension, *In re Combs* bars every stepchild such opportunity if the stepchild's natural parent predeceased the decedent – even if the stepchild's natural parent and the decedent were married at the former's death. The decision in *In re Combs* creates disparate classes of stepchildren that run contrary to modern-day notions of family, the plain language of the Wrongful Death Act, and the Legislature's intent when it amended the Wrongful Death Act in 1985. This error by the Court of Appeals persists because *In re Combs* was a published decision

and constitutes binding precedent on other panels of the Court of Appeals and lower courts. MCR 7.215(C)(2).

The Probate and Estate Planning Section believes that this Court should overrule *In re Combs* and hold that the Wrongful Death Act, as provided in MCL 600.2922(3)(b), makes a deceased's stepchild eligible to seek a share of wrongful death proceeds consistent with the common law regarding the measurement of claims for the loss of society and companionship, regardless of whether the stepchild's natural parent survives the deceased or whether the stepchild's natural parent was divorced from the deceased at the deceased's death. *Cf., McTaggart v Lindsey*, 202 Mich App 612, 615; 509 NW2d 881 (1994); *see also,* MCL 700.2601(e); MCL 700.2708(e). The result urged by the Probate and Estate Planning Section is consistent with the plain language of MCL 600.2922, the intent of the Legislature, and Michigan's statutory scheme and common law related to post-death estates and administration, including the Estates and Protected Individuals Code (EPIC) and the now-repealed Revised Probate Code (RPC).

I. THE DECISION IN *IN RE COMBS* SHOULD BE OVERRULED BECAUSE THE COURT OF APPEALS INCORRECTLY INTERPRETED MCL 600.2922(3) OF THE WRONGFUL DEATH ACT TO ALLOW ONLY THE STEPCHILDREN OF A SPOUSE WHO SURVIVED THE DECEASED TO SEEK A SHARE OF THE PROCEEDS FROM A WRONGFUL DEATH SETTLEMENT OR RECOVERY.

Although the probate court and the reviewing panel of the Court of Appeals in the proceedings below were bound by MCR 7.215(C)(2) to apply *In re Combs* to Appellants' claims, the panel of the Court of Appeals in this matter erred when it agreed with the decision in *In re Combs* that limited the class of stepchildren who might share in wrongful death proceeds to those whose natural parent survived the deceased and was married to the deceased at the deceased's death. Instead, the Court of Appeals should have determined that the decision in *In re Combs* relied on an incorrect definition of

"spouse" given the word's unmodified use and purpose in MCL 600.2922(3)(b), as well as its scope and technical meaning in post-death contexts – which itself was based on a limited definition of "marriage" that also ignored the post-death context that applies in wrongful death actions.

A. STANDARD OF REVIEW

A holding that involves the application and interpretation of statutes and other questions of law is reviewed de novo. *In re MCI Telecommunications Complaint*, 460 Mich 396, 414; 596 NW2d 164 (1999); *Hoste v Shanty Creek Mgmt Inc*, 459 Mich 561, 569; 592 NW2d 360 (1999), *rehrg den*, 460 Mich 1201; 598 NW2d 336 (1999).

B. *IN RE COMBS* SHOULD BE OVERRULED BECAUSE THERE IS NOTHING IN THE PLAIN LANGUAGE OF MCL 600.2922(3)(b) THAT CAN BE REASONABLY READ AS LIMITING THE CLASS OF STEPCHILDREN TO THOSE WHOSE PARENT SURVIVES THE DECEASED.

As this Court considers the issues presented by Appellants and the position taken by *amicus curiae* Probate and Estate Planning Section, it is important to remember the purpose of Michigan's Wrongful Death Act and the manner in which it is applied. The Wrongful Death Act is contained in MCL 600.2922 and provides the exclusive post-death remedy for an individual's death related to a "wrongful act, neglect, or fault of another" if the deceased would have been able to maintain an action for damages for the underlying injury "if death had not ensued. . . ." MCL 600.2922(1). It also is clear that the Wrongful Death Act allows a personal representative of the deceased's estate, and no one else, to pursue a post-death remedy for wrongful death. MCL 600.2922(2). This is true even though a portion of the recovery or settlement may not flow to or through the deceased's estate. MCL 600.2922(6); MCL 700.3924(2)(d). So, any reading of the Wrongful Death Act that ignores its purpose, application, and

mechanics as a post-death remedy, as done by the majority in *In re Combs*, is improper.

There is no question that the Wrongful Death Act, particularly MCL 600.2922(3), defines the scope and classes of individuals eligible (but not guaranteed) to share in a wrongful death recovery or settlement. *See also*, MCL 700.3924. MCL 600.2922(3) provides in its entirety as follows:

> (3) Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to 700.2805, the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:
>
> (a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined as of the date of death of the deceased.
>
> (b) The children of the deceased's spouse.
>
> (c) Those persons who are devisees under the will of the deceased, except those whose relationship with the decedent violated Michigan law, including beneficiaries of a trust under the will, those persons who are designated in the will as persons who may be entitled to damages under this section, and the beneficiaries of a living trust of the deceased if there is a devise to that trust in the will of the deceased.

Unfortunately, the majority in *In re Combs* misinterpreted the purpose of MCL 600.2922(3), and particularly the plain meaning of MCL 600.2922(3)(b), when it held that a deceased's stepchild is eligible to share in a wrongful death recovery or settlement only if that stepchild's natural parent survived the deceased.[1] *In re Combs*,

[1] It can be inferred from the reasoning of the majority's decision in *In re Combs* that the stepchild's natural parent also must have been married to the deceased at the deceased's death.

257 Mich App 625. The majority's entire analysis and interpretation of MCL 600.2922(3) consisted of the following:

> Applying the plain meaning of this provision to the facts of this case, we conclude that appellants are not the "children of the deceased's spouse" because the deceased, Ellen Combs, had no spouse at the time of her death. A "spouse" is a married person. In this case, Arlie Combs, Ellen Combs' husband, had passed away several years earlier, and his death ended their marriage. For this reason, we conclude that appellants are not entitled to a portion of the proceeds of the wrongful death action under M.C.L. § 600.2922(3).

257 Mich App 625 (citing, *Cornwell v Dept of Social Services*, 111 Mich App 68, 70; 315 NW2d 150 (1981); *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997)). It is not the brevity of the majority's analysis that is problematic, but rather the underpinnings that ignore the place and purpose of the Wrongful Death Act while equating a post-death action and remedy with pre-death actions and remedies, particularly divorce actions and others that rely on a presently existing marital relationship. If the majority in *In re Combs* properly and fully considered the rules involving statutory interpretation, it would have reached a different result.

The rules involving the process of statutory interpretation and the resolution of conflict between statutes are well-established. *Bailey v Oakwood Hospital*, 472 Mich 685; 698 NW2d 374 (2005); *Nowell v Titan Ins Co*, 466 Mich 478; 648 NW2d 157 (2002); *Murphy v Michigan Bell Tel Co*, 447 Mich 93; 523 NW2d 310 (1994); *Farrington v Total Petroleum, Inc*, 442 Mich 201; 501 NW2d 76 (1993); *Dodak v State Admin Bd*, 441 Mich 547; 495 NW2d 539 (1993). Unfortunately, most of these rules were overlooked or ignored by the majority in *In re Combs* and by the Court of Appeals panel in this case.

As an initial matter, the overriding goal of statutory interpretation is to give "effect to the intent of the Legislature" and "[n]othing will be read into a clear statute that is not within the intent of the Legislature as derived from the language of the statute itself." *In re Estate of Bennett*, 255 Mich App 545, 553; 662 NW2d 772 (2003) (citations omitted). Further, "[c]ourts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there." *Farrington*, 442 Mich 210.

If a statute does not define a term, the court is to ascribe its plain and ordinary meaning. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). To the extent possible, a court is to "give effect to the Legislature's purpose and intent according to the common and ordinary meaning of the language it used." *Bailey*, 472 Mich 693. Although a court may consult dictionary definitions, "technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning." *Compare, Koontz*, 486 Mich 312, *with* MCL 8.3a.

Next, when ascertaining intent, differing statutory provisions are read "to produce an harmonious whole." *Bailey*, 472 Mich 693. The goal of harmony not only applies to conflicting language within a statute, but also to conflicts between statutes. *Nowell*, 466 Mich 482; *Murphy*, 447 Mich 98; *Dodak*, 441 Mich 568.

The practical effect of these rules is that a court is bound to apply a statute, as written, if the language is clear and unambiguous. *Bennett*, 255 Mich App 553. However, "a statute 'should be construed to avoid absurd results that are manifestly inconsistent with legislative intent.'" *Detroit Intern Bridge Co v Commodities Export Co*,

279 Mich App 662, 674; 760 NW2d 565 (2008) (quoting, *Cameron v Auto Club Ins Assn*, 476 Mich 55, 110-112; 718 NW2d 784 (2006)); *In re Estate of Harris*, 151 Mich App 780, 786; 391 NW2d 487 (1986) (citation omitted) (holding that "[w]here an absurd result is reached through a literal construction of the statute, an exception or qualification is presumed to have been intended.").

Despite the existence of all of the foregoing rules applicable to statutory interpretation, the majority in *In re Combs* relied exclusively on a common, dictionary definition of "spouse," while creating a temporal limitation by resorting to the legal notion that a "marriage" legally terminates upon the death of one spouse that, according to the majority, necessarily extinguishes the spousal relationship and anything that might have flowed from such relationship. *In re Combs*, 257 Mich App 625. In short, the majority in *In re Combs* used the legal concept of a presently existing marriage to bootstrap its use of a common, dictionary definition suggesting one can only be a spouse if presently "married" (i.e., has not terminated by operation of law). Although seductively simple, such an interpretation is not supported by the plain language of MCL 600.2922(3)(b), the scope afforded to the word "spouse" in post-death contexts, or any contextual reading or harmonizing of related provisions in the Wrongful Death Act – and it contravenes the Legislature's intent.

1. The majority in *In re Combs* erred when it resorted to the common, dictionary definition of "spouse" and failed to recognize that the word "spouse" is a technical term that carries a peculiar and appropriate meaning in MCL 600.2922(3)(b).

The common, dictionary definition of "spouse" applied by the majority in *In re Combs* cannot be reconciled with the plain meaning of the Wrongful Death Act. The temporal limitation imposed by the majority and inferred by the majority into the

common, dictionary definition of "spouse" as "a married person" is inapposite to a post-death context because the death of a spouse does not void a marriage from inception or otherwise mean that a spousal relationship never existed, it merely terminates the legal relationship of marriage.

Instead, in a legal context, the word "spouse" has "acquired a peculiar and appropriate meaning in the law" and should "be construed and understood according to such peculiar and appropriate meaning." MCL 8.3a. This is apparent from the modified and unmodified use of "spouse" in numerous Michigan statutes. *See infra*, at 26-30. As properly noted by the majority in *In re Combs*, a "marriage" is a legal relationship that terminates only at death or by court order. In drafting statutes, including MCL 600.2922(3), the Legislature modifies "spouse" when necessary in order to create a sub-category of spouse (e.g., former spouse and surviving spouse) and the existence of a valid and viable marriage is relevant to the statutory scheme.[2] This conclusion is supported by the definition of "spouse" in Black's Law Dictionary which specifically includes "surviving spouse" to describe the persistence of the relationship in a post-death context:[3]

> spouse (12c) One's husband or wife by lawful marriage; a married person.
>
> - innocent spouse (1924) Tax. A spouse who may be relieved of liability for taxes on income that the other spouse did not include on a joint tax return. • The innocent spouse must prove that the other

[2] In fact, a search of the MCL reveals that the word "spouse," whether modified or unmodified, is used 432 times. (Appendix A). Of those 432 uses, "surviving spouse" is used 110 times and "former spouse" is used 46 times. (Appendix B; Appendix C).

[3] Further, the word "marriage" is primarily defined in Black's Law Dictionary as "[t]he legal union of a couple as spouses." *Black's Law Dictionary* (10th ed. 2014) (Appendix D); *see also,* MCL 551.2.

> spouse omitted the income, that the innocent spouse did not know and had no reason to know of the omission, and that it would be unfair under the circumstances to hold the innocent spouse liable.
>
> - putative spouse (1842) Family law. A spouse who believes in good faith that his or her invalid marriage is legally valid. See putative marriage under MARRIAGE (1).
>
> - surviving spouse (18c) A spouse who outlives the other spouse.

Black's Law Dictionary (10th ed. 2014) (Appendix E).

If an individual's status as a "spouse" terminated at death because of the legal termination of marriage at death, then why use "spouse" at all in a post-death context? In essence, the majority in *In re Combs* ascribed a meaning to "spouse" that makes the word utterly meaningless when considering post-death rights. *Koontz*, 466 Mich 312. The legal definition of "spouse" differs greatly from the common, dictionary meaning of "spouse" as the latter fails to recognize how that relationship is treated in a post-death context even where the marital relationship has terminated or ceased as a matter of law. In fact, the general and unmodified use of "spouse" in numerous legal contexts goes beyond the common, dictionary definition and encompasses more than the limited notion that one's status as a spouse can only be measured and determined at a single point in time. While it may be appropriate to rely on the legal viability of a marriage to interpret the meaning of "spouse" in some (particularly pre-death) situations, it is no less appropriate to rely on the creation of the spousal relationship in other (particularly post-death) situations. As discussed *infra*, the Legislature uses modifiers and limiting clauses when it finds it necessary to circumscribe or otherwise fix the meaning of "spouse" in contexts where the meaning may not be clear otherwise. Because MCL

600.2922(3)(b) does not contain a modifier or limiting clause for "spouse,"[4] it was improper for the majority in *In re Combs* to interpret "spouse" so narrowly.

2. The majority in *In re Combs* erred when it inserted a survivorship requirement into MCL 600.2922(3)(b) where the plain and unambiguous language contains no modifier or limiting clause for "spouse" that can be reasonably read to require survivorship.

The use of the word "spouse" in MCL 600.2922(3)(b) is undefined, general, unqualified, and without any inherent limitation, so it reasonably reflects all such relationships whether existing or terminated. As discussed *supra*, an individual only needs to be a party to a valid marriage to become a spouse. *Black's Law Dictionary* (10th ed. 2014) (Appendix D; Appendix E). Yet, the majority in *In re Combs* qualified and limited the meaning of "spouse" in a single subsection, MCL 600.2922(3)(b), where no modifier or limiting clause exists – and it did so in a way that is at odds with the use of a limiting clause for "spouse" (and other words) in the immediately preceding subsection, MCL 600.2922(3)(a).

The majority holding in *In re Combs* can only find support if this Honorable Court inserts a modifier or limiting clause into MCL 600.2922(3)(b) that does not exist otherwise. However, a court "may not read into the statute what is not within the Legislature's intent as derived from the language of the statute." *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010) (quotation omitted). Put differently, "courts may not look beyond the clear text of a statute to discover an unexpressed legislative intent." *Koontz*, 466 Mich 323. Even so, the majority in *In re Combs* improperly inserted a prerequisite into MCL 600.2922(3)(b) (i.e., that the "deceased's

[4] Other than requiring the individual to have been the "deceased's" spouse.

spouse" must survive the deceased) that is not found in the plain language provided by the Legislature. *In re Combs*, 257 Mich App 625. The majority justified its supplementation of the plain language by relying on the legal concept of "marriage" and the fact that a marriage legally terminates at the death of one spouse. *Id.* However, this was an error by the majority.

The majority's holding in *In re Combs* is contrary to the plain language of MCL 600.2922(3)(b) and the intent manifested by such plain language. Importantly, the entirety of MCL 600.2922(3)(b) contains only six words – "[t]he children of the deceased's spouse." Of those six words, "children" is the object which is preceded by "the" as a definite article and modified by the clause "of the deceased's spouse." The clear intent of this plain language is to refer to a deceased's stepchildren.[5] There is no other word in MCL 600.2922(3)(b) to justifiably interpret "deceased's spouse" to mean "deceased's surviving spouse" and the reliance of the majority in *In re Combs* on cases that focus on either divorce or pre-death rights cases that expressly require an intact marital relationship was misplaced. In fact, each of the cases on which the majority in *In re Combs* relied is inapposite to any reasonable and appropriate interpretation of "spouse" as used in MCL 600.2922(3)(b).

[5] Although it is unclear why the Legislature did not choose to use the words "stepchild" or "stepchildren," the most reasonable explanation is that the Wrongful Death Act did not contain any definitions and the Revised Probate Code did not use either "stepchild" or "stepchildren." In fact, "stepchild" was not introduced into the probate statutes until EPIC became effective on April 1, 2000. *See* MCL 700.2601(e); MCL 700.2708(e). Regardless, the Legislature's use of more verbose language to describe a relationship should not be used to justify the insertion of even more words in order to restrict the scope of MCL 600.2922(3)(b).

First, in support of its conclusion that the interpretation of "spouse" should be based on the common, dictionary definition, the majority in *In re Combs* cited *Cornwell v Dempsey*, 111 Mich App 68; 315 NW2d (1981). In *Cornwell*, the issue presented to the Court of Appeals was whether a woman who was not married to, but cohabitated with, the father of her child was eligible for benefits under the Aid to Dependent Children (ADC) program and Medicaid. *Cornwell*, 111 Mich App 69. In rejecting the woman's claim, the Court of Appeals held that:

> Plaintiffs initially challenge defendant's interpretation and implementation of s 407 of subchapter IV of the Federal Social Security Act, 42 U.S.C. s 607. Section 406 of the act provides for aid to the family of a needy child where the needy child has been deprived of parental support or care caused by the death, absence, or physical or mental incapacity of a parent. Coverage is expanded in s 607 to provide aid to families of a dependent child where the needy child has been deprived of parental support or care due to the father's unemployment, 42 U.S.C. s 607.
>
> Section 606 allows payments to meet the needs of the spouse of the relative with whom the dependent child is living if the spouse is living with the relative and "if such relative is the child's parent and the child is a dependent child * * * under section 607 of this title". The Michigan Department of Social Services interpreted this provision of s 606(b) to provide for assistance only to the legally married spouse of the relative who is receiving ADC-U benefits. Thus, Kegler was not provided for in the ADC-U grant given to Darryl and Andre Cornwell.
>
> We conclude that the Department of Social Services correctly interpreted the applicable provision of the Federal Social Security Act as not providing for aid to the noncaretaker unmarried parent of a dependent child. The act unambiguously provides for aid only to a spouse, which is defined by Webster's New Collegiate Dictionary (1976) to mean a married person. Unless a statute is ambiguous on its face, the words must be given their ordinary meaning. Lake Carriers' Ass'n v. Director of the Dep't of Natural Resources, 407 Mich. 424, 429, 286 N.W.2d 416 (1979).

Id. at 70-71 (emphasis added).

Unlike *In re Combs* or the instant case, there was never a valid marriage in *Cornwell* to create a spousal relationship on which the woman could rely. *Id.* 69-71. In short, the woman in *Cornwell* could not be considered a "spouse" because she was never married to the father of her child.[6] *Id.*

Second, contrary to the suggestion by the majority in *In re Combs*, nothing in either *Tiedman v Tiedman*, 400 Mich 571; 255 NW2d 632 (1977), or *Byington v Byington*, 224 Mich App 103; 568 NW2d 141 (1997), supports the conclusion that a spousal relationship that creates a stepparent-stepchild relationship under MCL 600.2922(3)(b) is voided because of death or divorce and thus terminates the stepparent-stepchild relationship. Both *Tiedman* and *Byington* focus on the status of the "marriage" or the "marital relationship" in the context of divorce and are devoid of any discussion regarding post-death rights that might flow from the creation of the spousal relationship. The distinction between the subject matter in *In re Combs* and the instant case on the one hand and *Tiedman* and *Byington* on the other hand could not be more stark.

In *Tiedman*, this Honorable Court confirmed the long-established concept that a court may not "render a judgment of divorce after the death of one of the parties [because without living parties]. . . 'there can be no relationship to be divorced.'" 400

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[6] Notably, in *Cornwell*, the Court of Appeals relied on the Michigan Department of Social Services' manual which provided:

> "Father and mother in the home who are not married to each other. If one parent is incapacitated or the father is unemployed, the other parent is not an eligible recipient (unless he or she has other children in the home that are deprived and eligible for ADC) because that parent is not a spouse."

111 Mich App 75, Note 1.

Mich 576 (quoting, *Wilson v Wilson*, 73 Mich 620, 621; 41 NW 817 (1889)). The only question faced by this Honorable Court was whether the trial court's pronouncement from the bench that it intended to grant a judgment of divorce was valid and enforceable where one of the parties died before the judgment was entered. *Id.*

Similarly, in *Byington*, the Court of Appeals noted that "[m]arriage is a status that legally terminates only upon the death of a spouse or upon entry of a judgment of divorce." 224 Mich App 109. However, the issue in *Byington* was whether property acquired by one spouse prior to the entry of a judgment of divorce, but while the parties were separated and divorce proceedings were pending, was a separate or marital asset subject to a property settlement. *Id.* at 107-110.

The entirety of each *Tiedman* and *Byington* revolved around rights between spouses, and no one else, in a divorce proceeding, not in a wrongful death context involving the claims for loss of society and companionship. As a result, the Probate and Estate Planning Section respectfully submits that neither case offers any insight into the interpretation of MCL 600.2922(3) or can be used to limit the scope of MCL 600.2922(3)(b) consistent with the majority holding in *In re Combs*.

3. When MCL 600.2922(3)(b) is read in context with the rest of the Wrongful Death Act, particularly the other provisions of MCL 600.2922(3), there is no support for the majority holding in *In re Combs*.

"When undertaking statutory interpretation, the provisions of a statute should be read reasonably and in context," not in isolation. *McCahan v Brennan*, 492 Mich 730, 739-740; 822 NW2d 747 (2012). In considering the importance of context of the Uniform Recognition of Acknowledgments Act (URAA), this Court previously stated:

> Under the doctrine of *noscitur a sociis*, a phrase must be read in context. A phrase must be construed in light of the phrases around

> it, not in a vacuum. Its context gives it meaning. *Koontz v. Ameritech Services*, Inc., 466 Mich. 304, 318, 645 N.W.2d 34 (2002). Similarly, it is a well-settled rule of law that, when construing a statute, a court must read it as a whole. *G C Timmis & Co. v. Guardian Alarm Co.*, 468 Mich. 416, 421, 662 N.W.2d 710 (2003); *Arrowhead Dev. Co. v. Livingston Co. Rd. Comm*., 413 Mich. 505, 516, 322 N.W.2d 702 (1982); *Layton v. Seward Corp*., 320 Mich. 418, 427, 31 N.W.2d 678 (1948). Without proper adherence to this rule, the Court of Appeals could not effectuate the intent behind the URAA.

Apsey v Memorial Hosp, 477 Mich 120, 130; 730 NW2d 695 (2007); *see also, Robinson*, 486 Mich 15-16.

The majority in *In re Combs* compounded its error of relying solely on the common, dictionary definition of "spouse" and its use in pre-death contexts, by reading MCL 600.2922(3)(b) in isolation and without any reference to other subparts contained in MCL 600.2922(3) and their purposes within the statutory scheme. In fact, the majority never addressed "context" as an element of statutory interpretation. *In re Combs*, 257 Mich App 625. Yet, because the entirety of MCL 600.2922(3) defines the scope and classes of individuals eligible to share in a wrongful death recovery or settlement, MCL 600.2922(3)(b) must be read in light of the coverage under MCL 600.2922(3)(a) and the expansion that MCL 600.2922(3)(b) and MCL 600.2922(3)(c) represent.[7] While each subsection of MCL 600.2922(3) represents a distinct group of

[7] For reference, MCL 600.2922(3) provides:

> (3) Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to 700.2805, the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:
>
> (a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under

individuals, they need to be read together in order to understand the entire class of eligible takers.

By its plain language, MCL 600.2922(3)(a) relates to two groups of individuals whose eligibility is based on their potential right to take from the deceased's estate under the laws of intestacy and the closeness of their blood-relationship to the deceased – none of whom can be a stepchild. Notably, the Legislature prioritized between the two groups by inserting a survivorship clause (". . .and, if none of these persons survive the deceased, then. . .") that limits the second group's rights to situations where none of the individuals in the first group survived the deceased. *Id.*

On the other hand, MCL 600.2922(3)(b) and MCL 600.2922(3)(c) significantly expand the scope of eligible takers beyond those who might take from the deceased's estate under the laws of intestacy. It does not appear to be disputed by either the Appellees or the majority in *In re Combs* that MCL 600.2922(3)(b) can only logically apply to a stepchild of the deceased, otherwise it would be redundant in light of the reference in MCL 600.2922(3)(a) to the deceased's "children." However, the majority then failed to complete the interpretation of MCL 600.2922(3)(b) in light of MCL 600.2922(3)(a) because it completely disregarded that the phrase "deceased's spouse"

> the laws of intestate succession determined as of the date of death of the deceased.
>
> (b) The children of the deceased's spouse.
>
> (c) Those persons who are devisees under the will of the deceased, except those whose relationship with the decedent violated Michigan law, including beneficiaries of a trust under the will, those persons who are designated in the will as persons who may be entitled to damages under this section, and the beneficiaries of a living trust of the deceased if there is a devise to that trust in the will of the deceased.

appears in both subsections, but only MCL 600.2922(3)(a) contains a modifying or limiting clause (i.e., ". . .and, if none of these persons survive the deceased, then. . ."). If the Legislature truly meant to limit the meaning of "deceased's spouse" in MCL 600.2922(3)(b) to a spouse that survives the deceased, then the use of the modifying or limiting clause in MCL 600.2922(3)(a) serves no purpose and is mere surplusage under the interpretation offered by the majority – at least as it relates to the "deceased's spouse" – because a survivorship requirement was inferred by the majority's reliance on the common, dictionary definition of "spouse" and the legal definition of "marriage." *Cf., In re Combs*, 257 Mich App 625; *see also, Robinson*, 486 Mich 17-18 (statutory provisions should not be construed in a manner that renders language meaningless).

A reading and interpretation of MCL 600.2922(3)(b) in context makes it clear that the eligibility of a stepchild to take under the Wrongful Death Act does not hinge on the status of the "spouse" at the time of the deceased's death, but rather the focus is on the child who, at one point, became the deceased's stepchild via a valid marital relationship when the child's natural parent became the deceased's spouse. This interpretation is consistent with the Wrongful Death Act's identification of potential claimants based on the creation or existence of a particular relationship with the deceased. MCL 600.2922(3). Further, when other courts have focused on the nature of the relationship in similar contexts, they concluded that the stepchild/stepparent relationship persists even after the death of the stepchild's biological parent and even post-divorce. *See In re Estate of Blessing*, 273 P3d 975 (Wash 2012) (Appendix F); *In re Bordeaux' Estate*, 225 P2d 433 (Wash 1950) (Appendix G); *Sjogren v Metropolitan Property & Cas Ins Co*, 703 A2d 608 (RI 1997) (Appendix H); *Remington v Aetna Cas & Sur Co*, 646 A2d 266 (Conn

App 1994), rev'd on other grounds 692 A2d 399 (1997) (Appendix I); *Patmon v Nationwide Mut Fire Ins Co*, 2014 WL 7338907, unpublished per curiam opinion (Docket No. 318307, Mich App 2014) (Appendix J). [8]

The most substantively similar and relevant of these cases to the issue before this Honorable Court is *In re Blessing* in which the Supreme Court of Washington resolved the question of whether the children of the deceased's predeceased spouse were "stepchildren" under Washington's wrongful death statute, RCW 4.20.020. *In re Blessing,* 273 P3d 975 (Appendix F). The factual scenario in *In re Blessing* was strikingly similar to the present case. Audrey Blessing ("Blessing") and Carl Blaschka ("Blaschka") were married in 1964. *Id.* Each had children from prior marriages and they raised them all together with neither adopting the other's children. *Id.* Blaschka predeceased Blessing in 1994 and Blessing remarried in 2002 (her third husband). *Id.* at 976. Blessing outlived her third husband, but she died in 2007 in an automobile accident. *Id.* During the period after Blaschka's death, his children and Blessing maintained a close relationship. *Id.*

After Blessing's death, Blaschka's children sought to participate in the wrongful death claim filed by Blessing's personal representative (who also was Blessing's

[8] These cases use the concept of "affinity" to more appropriately describe the stepparent-stepchild relationship and the basis for that relationship to persist even after divorce or the death of the natural parent. In the context of marital relations, "affinity" is defined as the "relation that one spouse has to the blood relatives of the other spouse, " a relationship by marriage," or "[a]ny familial relation resulting from a marriage." Black's Law Dictionary (10th ed. 2014) (Appendix K). Although "affinity" is not used in MCL 600.2922(3)(b), it is a more apposite measure of the relationship that formed the basis for the inclusion of MCL 600.2922(3)(b) in the 1985 amendment of the Wrongful Death Act and the removal of "surviving" as a modifier to protect the broader class of all of a deceased's stepchildren.

biological daughter). *Id.* The personal representative sought a dismissal of the petition filed by Blaschka's children claiming that they were not Blessing's "stepchildren" under RCW 4.20.020 because Blaschka predeceased Blessing. *Id.* The trial court denied the personal representative's motion, but the court of appeals reversed the decision and dismissed the petition filed by Blaschka's children. *Id.*

The Supreme Court of Washington reversed the court of appeals and reinstated the trial court's order. As an initial matter, the Supreme Court of Washington recognized that the term "stepchildren" was not defined by the wrongful death statute. *Id.* at 976. However, the Supreme Court of Washington concluded that the principle of "affinity, as thoroughly discussed in *In re Bordeaux' Estate*, 225 P2d 433 (Wash 1950) (Appendix G), supported its holding that a stepchild retains his or her status despite divorce or the death of the natural parent. *Id.* at 977-978. Specifically, the Supreme Court of Washington stated:

> ¶ 11 We have previously considered a similar argument in the context of estate tax calculations. In Bordeaux, we held that the term "stepchild" under the statute includes those children whose stepparent survived the children's natural or adoptive parent. In that case, the decedent and her husband (who had two children from a previous relationship) had been married for 34 years when the husband died. The decedent had raised the children as if they were her own. This filial relationship continued after the husband died and until the decedent's death 15 years later. The decedent left her predeceased husband's children a portion of her estate. The question was whether the children could be classified as the decedent's "stepchildren" for inheritance tax purposes. Rem.Rev.Stat. § 11202 (Supp.1943). As in this case, "stepchild" was undefined in the statute. We began our analysis by noting that it was within popular understanding that children remained "stepchildren" even though their parent died before their stepparent. Significantly, in Bordeaux, we also consulted the Webster's dictionary for the meaning of "stepchild" and found nothing in this definition precluding the children of a predeceased spouse from maintaining their stepchildren status. Bordeaux, 37 Wash.2d at

563, 225 P.2d 433. The tax commission of the State of Washington, however, contended that under common law the death of the natural parent severed the "tie of affinity," legally ending the relationship between the stepchildren and stepparent.

* * *

¶ 13 We find no basis to distinguish the statutory analysis in Bordeaux to the wrongful death statute language at issue here. Similar to the statute in Bordeaux, RCW 4.20.020 includes "stepchildren" without defining or limiting the term. In Bordeaux we found nothing in the dictionary definition precluding the plain meaning that a step-relationship could remain intact past the death of the children's natural or adoptive parent. Applying that analysis here, the Blaschka children became Blessing's stepchildren upon the marriage of their father and Blessing. Their step-relationship \ continued even though their father died before Blessing. We hold that the Blaschka children retained their "stepchildren" status under RCW 4.20.020.

* * *

¶ 18 The Court of Appeals, agreeing with the estate, appeared concerned that the opposite interpretation would lead to absurd results. In the court's view, the Blaschka children had lost their stepchildren status by the time Blessing had died. At best, the court explained, the Blaschka children were former stepchildren, and permitting the Blaschka children to retain their stepchildren status would follow for former divorced spouses, creating an absurd result. We disagree.

¶ 19 Primarily, the issue before us is the interpretation of the statutory term "stepchildren," not spouses. An equally odd result would be to limit the "stepchildren" status under RCW 4.20.020 to only those children whose stepparent died prior to their biological or adoptive parent. For example, there could very well be situations where a minor child or young adult continues to live with or rely on their stepparent past the death of their biological or adoptive parent. A limitation on those who retain their stepchildren status would exclude stepchildren in that situation from benefiting in a wrongful death suit involving their stepparent. In our view, because the term "stepchildren" is undefined in RCW 4.20.020, which parent died first is irrelevant to whether a stepchild maintains his or her status. Any concerns over the result or regarding which stepchildren should be entitled to recover in a wrongful death suit are more appropriately factored into any damages determination.

Id. at 977-979 (notes omitted).

Clearly, the Probate and Estate Planning Section realizes that the wrongful death statute in *In re Blessing* used the term "stepchildren," instead of the more verbose "[t]he children of the deceased's spouse" used in MCL 600.2922(3)(b). However, the Probate and Estate Planning Section respectfully submits that the meaning, covered subject matter, and analysis of the effects of a legal termination of the marriage are the same and warrant this Honorable Court's consideration of how the principle of "affinity" informs the interpretation of MCL 600.2922(3)(b) where it is undisputed that MCL 600.2922(3)(b) refers to a deceased's stepchildren.[9]

C. At Worst, The Language Of MCL 600.2922(3)(b) Is Ambiguous And It Is Clear That The Legislature Did Not Intend To Limit The Class Of Stepchildren To Those Whose Parents Survived The Decedent, But Rather Chose To Expand It Beyond Notions Of Blood-Relations.

"An anchoring rule of jurisprudence, and the foremost rule of statutory construction, is that courts are to effect the intent of the Legislature." *Roberts v Mecosta County General Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). The Probate and Estate Planning Section believes that a careful and reasoned analysis of MCL 600.2922(3), as discussed *supra*, will lead this Honorable Court to conclude that the majority holding in *In re Combs* should be overruled and MCL 600.2922(3)(b)

[9] The Probate and Estate Planning Section acknowledges that, as in *In re Blessing*, an argument may be advanced suggesting that because both MCL 600.2922(3)(a) and MCL 600.2922(3)(b) rely on the term "deceased's spouse" an adoption of the reasoning in *In re Blessing* opens the door for former spouses to make claims under the Wrongful Death Act. *In re Blessing*, 273 P3d 979 (Appendix F). However, it clear from the plain language of MCL 600.2922(3)(a) that it deals with the class of individuals who might inherit from the deceased under the laws of intestacy because a former spouse is not within that class –something expressly limited by MCL 600.2922(3). *See also,* MCL 700.2801.

interpreted to permit every stepchild of a deceased to apply for a share of a wrongful death recovery or settlement. However, in the event that this Honorable Court determines that MCL 600.2922(3)(b) is ambiguous, the Probate and Estate Planning Section still believes that the outcome should be the same after applying the appropriate rules of statutory construction and respecting the clear intent of the Legislature to apply MCL 600.2922(3)(b) in a manner contrary to that imposed by the majority holding in *In re Combs*.

1. The legislative history of the 1985 amendment to the Wrongful Death Act and the ultimate removal of "surviving" from the draft of MCL 600.2922(3)(b) support an overruling of the majority holding in *In re Combs*.

The amendment of the Wrongful Death Act in 1985 resulted in a wholesale restructuring of the pre-1985 version of MCL 600.2922 and a broad expansion of the pool of individuals eligible to share in a wrongful death recovery or settlement. *Compare* MCL 600.2922, *with* Pre-1985 MCL 600.2922 (Appendix L). In particular, the pre-1985 version of MCL 600.2922 limited potential takers to the "surviving spouse" and "the next of kin." Pre-1985 MCL 600.2922 (Appendix L). Importantly, there was no reference to the "children of the deceased's spouse" or any other phrase that might be reasonably interpreted to include a deceased's stepchildren. *Compare* MCL 600.2922(3)(b), *with* Pre-1985 MCL 600.2922 (Appendix L).

In *Bush v Shabahang*, 484 Mich 156; 772 NW2d 272 (2009), this Honorable Court was faced with how amendments to MCL 600.5856 affected notices of intent in medical malpractice actions. Both the majority and dissent in *Bush* recognized that, in construing an ambiguous statutory provision, it is proper to consider the nature of the

changes made by statutory amendments and the language rejected and eventually used by the Legislature. 484 Mich 169-170, 196-197, 202-203.

When using the rule of construction outlined in *Bush* to construe the amendments to the pre-1985 version of MCL 600.2922, the Legislature rejected "deceased's surviving spouse" in favor of "deceased's spouse" in what is now MCL 600.2922(3)(b) to avoid the very interpretation reached by the majority in *In re Combs*. *Compare* HB 4487[10] (Appendix M), *with* House Legislative Amendment, HB 4487, May 16, 1985[11] (Appendix N), and Substitute HB 4487[12] (Appendix O). In reviewing the legislative history surrounding the amendment to the pre-1985 version of MCL 600.2922, it is apparent that the purpose of removing "surviving" from MCL 600.2922(3)(b) was to ensure that all stepchildren of the deceased would be eligible to seek a share of a wrongful death recovery or settlement. Moreover, the concern expressed by the dissent in *Bush* regarding the motives to be ascribed to the Legislature's consideration and use of alternatives in language is satisfied by the transcript of the House Judiciary Committee meeting on May 16, 1985, regarding HB 4487 and the removal of "surviving" from the draft of MCL 600.2922(3)(b). *See* Certified House Judiciary Committee Hearing Transcript (Appendix P). Specifically, the testimony provided by Joseph P. Buttiglieri on behalf of the Michigan Trial Lawyers

[10] HB 4487 was originally introduced on March 26, 1985. This draft of MCL 600.2922(3)(b) referred to "[t]he children of the deceased's surviving spouse." (Appendix M).

[11] While in committee, HB 4487 was amended to remove "surviving" from the draft of MCL 600.2922(3)(b). This amendment was adopted by the committee and made part of Substitute HB 4487. (Appendix N).

[12] Substitute HB 4487 was passed by the House on May 28, 1985. (Appendix O).

Association (MTLA) supports the conclusion that the removal of "surviving" from the draft of MCL 600.2922(3)(b) was intended to ensure that the class of stepchildren eligible to take under the Wrongful Death Act would include all of the deceased's stepchildren and not depend on the survival of their natural parent. (Appendix M, at 4-5); *see also,* House Legislative Amendment, HB 4487, May 16, 1985[13] (Appendix N); Substitute HB 4487[14] (Appendix O).

2. The Wrongful Death Act, particularly MCL 600.2922(3)(b), should be read *in pari materia* with EPIC and the RPC.

Because the Wrongful Death Act is a post-death remedy, it should be read *in pari materia* with Michigan statutes governing post-death affairs, particularly EPIC, to resolve any possible ambiguity:

> "'The object of the rule *in pari materia* is to carry into effect the purpose of the legislature as found in harmonious statutes on a subject.'" *Jennings v. Southwood*, 446 Mich. 125, 137, 521 N.W.2d 230 (1994), quoting *Wayne Co. v. Auditor General*, 250 Mich. 227, 233, 229 N.W. 911 (1930).
>
> Statutes *in pari materia* are those which relate to the same person or thing, or the same class of persons or things, or which have a common purpose. It is the rule that in construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although enacted at different times, and containing no reference one to the other. [*Detroit v. Michigan Bell Tel. Co.*, 374 Mich. 543, 558, 132 N.W.2d 660 (1965).]

Apsey, 477 Mich 129, note 4; *see also, Robinson*, 486 Mich 9, note 4.

[13] While in committee, HB 4487 was amended to remove "surviving" from the draft of MCL 600.2922(3)(b). This amendment was adopted by the committee and made part of Substitute HB 4487. (Appendix N).

[14] Substitute HB 4487 was passed by the House on May 28, 1985. (Appendix O).

The Probate and Estate Planning Section agrees with Appellants that additional support for resolving any possible ambiguity in MCL 600.2922(3)(b) in favor of including all of a deceased's stepchildren, and against the majority holding in *In re Combs,* can be found in a review of various provisions in EPIC and even its predecessor, the RPC. In fact, the mandate to read the Wrongful Death Act *in pari materia* with EPIC (and, as necessary, the RPC) is evident from the Wrongful Death Act's incorporation by reference of several concepts and specific statutes within EPIC. *Apsey*, 477 Mich 129, note 4; *see also, Robinson*, 486 Mich 9, note 4.

First, a wrongful death claim may only be maintained by the personal representative of the deceased's estate. MCL 600.2922(2). Second, EPIC contains a companion statute to MCL 600.2922 governing the approval and distribution of settlement proceeds obtained prior to commencing a civil action. MCL 700.3924. Third, MCL 600.2922(3) expressly refers to MCL 700.2802 through MCL 700.2805 (all part of EPIC) as limitations on an individual's ability to take under the Wrongful Death Act. Fourth, any determination of whether an individual is a potential heir at law entitled to take under the laws of intestate succession requires an analysis under Article II, Part 1 of EPIC. MCL 600.2922(3)(a). For unknown reasons, the majority in *In re Combs* simply ignored the intersection and overlap between the Wrongful Death Act and EPIC (and the RPC), as well as prior cases decided by other panels of the Court of Appeals which recognized that certain other provisions of the Revised Judicature Act (RJA) and even the Wrongful Death Act should be read *in pari materia* with EPIC and/or the RPC. *See Lindsey v Harper Hospital*, 455 Mich 56, 65; 564 NW2d 861 (1997) (referring to the RPC to define "personal representative" as used in the MCL 600.5852); *In re Renaud*

Estate, 202 Mich App 588; 509 NW2d 858 (1994), lv den 444 Mich 987; 519 NW2d 154 (1994) (referring to the RPC to define "descendant" for purposes of intestate succession as used in the Wrongful Death Act); *Turner v Grace Hospital*, 209 Mich App 66; 530 NW2d 487 (1995), rev'd 454 Mich 863; 560 NW2d 629 (1997) (referring to the RPC to define "child" as used in the Wrongful Death Act).

As far as the interpretation and construction of MCL 600.2922(3)(b) are concerned, both the RPC and EPIC[15] support a broad meaning of "spouse" when unmodified and each uses "former" or "surviving" as a modifier when referring to a "former spouse" or a "surviving spouse," respectively, or otherwise requiring a limitation not apparent from the surrounding context.

The RPC was in effect when the Wrongful Death Act was amended in 1985. As discussed *supra*, the likely reason for the Legislature's use of "[t]he children of the deceased's spouse" is probably because: (a) the RPC's definition of "child" expressly excluded "stepchild;" and (b) the RPC did not define "stepchild" or "stepchildren." MCL 700.3(4) (repealed by MCL 700.8102) (Appendix Q). Importantly, however, the RPC did define "surviving spouse" in MCL 700.141 (repealed by MCL 700.8102) as follows:

> (1) A person who at the time of the decedent's death is validly divorced from the decedent or whose marriage to the decedent is validly annulled is not a surviving spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.
>
> (2) For purposes of this act, a surviving spouse does not include any of the following:

[15] A search of the EPIC reveals that the word "spouse," whether modified or unmodified, is used 56 times. (Appendix R). Of those 56 uses, "surviving spouse" is used 24 times and "former spouse" is used 6 times. (Appendix S; Appendix T).

> (a) A person who obtains or consents to a final decree or judgment of divorce from a decedent or an annulment of their marriage which decree or judgment is not recognized as valid in this state, except that this subdivision shall not apply if that person and decedent subsequently participated in a marriage ceremony purporting to marry each to the other or subsequently lived together as husband and wife.
>
> (b) A person who, following a defective decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person.
>
> (c) A person who, at the time of the decedent's death, is living in a bigamous relationship with another person which is not covered by subdivision (a) or (b).
>
> (3) For purposes of this act, a surviving spouse does not include a spouse who was party to a valid proceeding concluded by an order purporting to terminate all marital property rights, or who voluntarily entered into a valid written contract specifically settling all marital property rights.

MCL 700.141 (repealed by MCL 700.8102) (Appendix U).

This selection of statutes amply demonstrates that the Legislature is able to limit the scope of "spouse" when it intends to do so by using modifiers such as "former" or "surviving." The fact that MCL 600.2922(3)(b) contains no such modifier supports the overruling of the majority holding in *In re Combs*.

More compelling even, is the fact that EPIC defines "stepchild" in two separate statutes that govern the rules of construction applicable to certain governing instruments and beneficiary designations. MCL 700.2601(e) defines "stepchild" as "a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, who is not the testator's or donor's child." (Emphasis added). MCL 700.2708(e) defines "stepchild" as "a child of the decedent's surviving, deceased, or former spouse, and not of the decedent." (Emphasis added). Neither definition limits

the scope of the stepparent-stepchild relationship to instances where the stepchild's natural parent survived or stayed married to the deceased.

Because it is undisputed that MCL 600.2922(3)(b) is intended to cover stepchildren, it is appropriate under the doctrine of *in pari materia* to refer to EPIC's definition of "stepchild" to determine whether any limits should be placed on the relationship. *Apsey, supra; Robinson, supra*.

II. A DECEDENT'S STEPCHILDREN WHOSE NATURAL PARENT DIED WHILE STILL MARRIED TO THE DECEDENT SHOULD BE ENTITLED TO NOTICE OF A WRONGFUL DEATH CLAIM AND BE PERMITTED TO SEEK A SHARE OF ANY PROCEEDS RECOVERED UNDER THE WRONGFUL DEATH ACT CONSISTENT WITH THE COMMON LAW MEASUREMENT FOR A LOSS OF SOCIETY AND COMPANIONSHIP.

The standard of review discussed in Section I.A. *supra*, also applies to this section. For the reasons discussed *supra*, the Probate and Estate Planning Section submits to this Honorable Court that MCL 600.2922(3)(b) should be interpreted as permitting a deceased's stepchild to apply for a share of a wrongful death recovery or settlement consistent with the common law measurement for a loss of society and companionship even if that stepchild's natural parent did not survive the deceased.

III. A DECEDENT'S STEPCHILDREN WHOSE NATURAL PARENT DIED WHILE NO LONGER MARRIED TO THE DECEDENT SHOULD BE ENTITLED TO NOTICE OF A WRONGFUL DEATH CLAIM AND BE PERMITTED TO SEEK A SHARE OF ANY PROCEEDS RECOVERED UNDER THE WRONGFUL DEATH ACT CONSISTENT WITH THE COMMON LAW MEASUREMENT FOR A LOSS OF SOCIETY AND COMPANIONSHIP.

The standard of review discussed in Section I.A. *supra*, also applies to this section. For the reasons discussed *supra*, the Probate and Estate Planning Section submits to this Honorable Court that MCL 600.2922(3)(b) should be interpreted as permitting a deceased's stepchild to apply for a share of a wrongful death recovery or settlement consistent with the common law measurement for a loss of society and

companionship even if that stepchild's natural parent did not survive the deceased and/or was not married to the deceased at the deceased's death.

CONCLUSION

Although well-intentioned, the probate court's and the Court of Appeal's reliance on and adoption of the majority holding in *In re Combs* is contrary to the plain language of MCL 600.2922(3) and inconsistent with the well-established rules of statutory interpretation and construction. The majority in *In re Combs* disregarded the peculiar and appropriate meaning afforded to the term "spouse," particularly in post-death contexts, and instead imposed a temporal limitation that does not appear anywhere in the plain language of MCL 600.2922(3)(b). Moreover, the majority failed to understand the purpose of MCL 600.2922(3)(b) within the overall context of MCL 600.2922(3) intended to expand the pool of eligible takers under the Wrongful Death Act. In short, the majority improperly focused on the persistence of the marital relationship between the deceased and the stepchild's natural parent, rather than focusing on the stepparent-stepchild relationship that is created at the time of the marriage – and understanding that the stepparent-stepchild relationship continues according to the principle of "affinity" even after the underlying marriage terminates by operation of law.

Even if this Honorable Court were to determine that MCL 600.2922(3)(b) is ambiguous, the rules of statutory construction compel an overruling of *In re Combs*. First, it is clear from the legislative history that the Legislature intended MCL 600.2922(3)(b) to cover all stepchildren regardless of the status of a particular stepchild's natural parent. This was accomplished through the removal of the word "surviving" as a modifier to spouse in MCL 600.2922(3)(b) before it was passed in its

final form and signed into law. Second, the rule of *in pari materia* compels a recognition that if the Legislature intended to limit the class of stepchildren only to those whose natural parent survived the deceased, it would have inserted "surviving" as a modifier to "spouse" consistent with EPIC and the RPC. Further, EPIC does not limit the definition of "stepchild" as was done by the majority in *In re Combs*.

As a result, an overruling of *In re Combs* is proper and this Honorable Court should hold that MCL 600.2922(3)(b) permits all stepchildren to apply for a share of a wrongful death recovery or settlement consistent with the evidentiary requirements to establish a loss of society and companionship, regardless of whether a particular stepchild's natural parent survived the deceased or divorced the deceased.

REQUESTED RELIEF

WHEREFORE, *Amicus Curiae* State Bar of Michigan's Probate and Estate Planning Section respectfully requests that this Honorable Court peremptorily overrule *In re Combs Estate*, 257 Mich App 622; 699 NW2d 313 (2003), and remand this case to the probate court for reconsideration consistent with the interpretation of MCL 600.2922(3)(b) urged in the Probate and Estate Planning Section's *amicus curiae* brief.

Alternatively, *Amicus Curiae* State Bar of Michigan's Probate and Estate Planning Section respectfully requests that this Honorable Court grant leave to appeal to Appellants Elmer Carter, Philip Carter, David Carter, and Doug Carter.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

PRINCE LAW FIRM

/s/ Shaheen I. Imami (e-signed)

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